

**\OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
Northern District of California**

CIVIL MINUTES

Date: November 16, 2017

Time: 55 minutes

Judge: EDWARD M. CHEN

Case No.: 16-cv-01386-EMC

Case Name: SEC v. Bivona, et al.

Attorney for Plaintiff:

John Yun, Marc Katz and Patricia Schrage (phone)

Attorney for Defendant:

Jahan Raissi (for Bivona)

John Cotton and Peter Hartheimer for Receiver

Patrick Gibbs (for non-party Telesoft Capital)

Jonathan Levine (SRA Funds)

Theodore Griffinger (Global and Benchmark)

Deputy Clerk: Betty Lee

Court Reporter: Lydia Zinn
(partially sealed)

PROCEEDINGS

- Final hearing on Receiver's Motion for Approval of Joint Distribution Plan/ Receiver's Administrative Motion for Approval of Fees #262 / Status conference

SUMMARY

Receiver's Application for Fees

For the reasons stated on the record and with the agreement of the parties, the Court grants the Receiver's Administrative Motion for Approval of Fees in part, subject to a 20% holdback pursuant to the Court's order appointing the Receiver. See Docket No. 142. The Court exercises its discretion to hold back 20% of the cumulative amount of all interim fee applications by the Receiver, including those previously approved and currently pending. See Docket No. 215 (approving \$221,120.67 to Receiver); Docket No. (requesting \$143,417.00 for the Receiver). Thus, the Court will hold back \$72,907.53 (20% of the sum of \$364,537.67). The Receiver shall receive \$70,509.47 out of the \$143,417.00 requested immediately, and the remaining \$72,907.53

shall be held back without prejudice to later distribution. The Receiver's counsel's request for \$26,807 is approved for immediate distribution.

As stated on the record, the Court's Order of Appointment of the Receiver is hereby amended to extend the application deadline from 45 days after the end of each calendar quarter to 60 days. See Docket No. 1424 at 16. Further, with the agreement of all parties, future fee applications will be noticed through the regular motion process, and the parties will meet-and-confer in good faith and inform the Court if there are no objections so that such motions can be resolved without a hearing.

Claim Form

The deadline for claims shall be January 30, 2018. The Receiver will submit a revised proposed claim form based on the Court's comments on the record. The claim forms shall be pre-populated with available information, with language inserted to the form advising claimants to review pre-populated information carefully and to verify its accuracy. The revised claim form shall be filed with the Court within 7 days, and a Word copy shall be e-mailed to the Courtroom Deputy.

Notice Process

The parties are reviewing a draft publication notice and investigating costs. The parties shall submit a proposal for the notice process, with proposed order, within 14 days.

Retention of Investment Banker

The parties shall proceed with negotiations quickly in accordance with the Court's instructions during the sealed portion of the proceedings. If there are disputes regarding the appointment of an investment banker, the parties shall contact the Court. An update will be filed with the Court (or, if necessary, lodged) no later than Friday December 1, 2017.

Snap and Cloudera Shares

The Receiver informed the Court that Snap and Cloudera have undergone IPO and the Receiver's interests in both companies have been released from any available restrictions on resale. The Receiver, SEC, Investor Group, and other interested parties shall continue to meet-and-confer regarding whether the assets should be liquidated, and if not liquidated, exempting the Receiver from liability.

Case Management Conference

Further CMC set for 1/25/18 at 10:30 a.m. An updated joint CMC statement shall be filed by 1/18/18.